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6 **DISTRICT COURT OF GUAM**
7 **TERRITORY OF GUAM**

8 VAATAUSILI MARK ALAIMALO,

Criminal Case No. 96-00039

9 Defendant-Petitioner,

Civil Case Nos. 99-00106
10 vs. 03-00044
11 UNITED STATES OF AMERICA, 06-00034

12 Plaintiff-Respondent.

13 **ORDER**

14 This matter comes before the court with respect to Petitioner Vaatausili Mark Alaimalo's
15 ("Alaimalo") Notice of Appeal regarding this Court's Order filed November 14, 2006. *See* Docket
16 Nos. 151 and 145 respectively. A Notice of Appeal shall be construed as an Application for a
17 Certificate of Appealability. *See*, FED. R. APP. P. 22(b). A certificate of appealability may be issued
18 from a final order in a proceeding under § 2255 "only if the applicant has made a substantial
19 showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

20 The Ninth Circuit has expressly indicated with respect to this case that "no petition for
21 rehearing or motion for reconsideration shall be filed or entertained in this case." *See* Docket No.
22 138. Alaimalo has not substantially demonstrated the denial of his constitutional rights, pursuant
23 to 28 U.S.C. § 2253(c)(2). Nor has he demonstrated that the issues surrounding this court's
24 dismissal of Alaimalo's § 2255 petition¹ is "debatable among jurists of reason." *See, Jennings v.*

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26 ¹ Alaimalo initially filed three separate documents entitled (1) "Motion to re-open via Federal
27 Rule of Civil Procedure 60(b)(4)"; (2) "Petition and Complaint Requesting a 'Certificate of
28 Innocence'"; and (3) "Motion fo leave to proceed 'In Forma Pauperis' Poor Person". *See* Docket
Nos. 141, 142, and 143. The court recognized that Alaimalo's "60(b)" motion and request for a
"certificate of innocence" were in reality attempting to state a claim for a successive § 2255 motion

1 *Woodford*, 290 F.3d 1006, 1010 (9th Cir. 2002). Accordingly, Alaimalo's motion for a certificate
2 of appealability is DENIED.

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4 **SO ORDERED.**

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27 and were more properly treated as such. The matters were dismissed for lack of jurisdiction as
28 Alaimalo failed to obtain authorization from the Ninth Circuit Court of Appeals to file a successive
 petition.



/s/ **Frances M. Tydingco-Gatewood**
Chief Judge
Dated: Mar 26, 2007